United States Department of Labor
Employees' Compensation Appeals Board

J.A., Appellant	)	
and	)	**Docket No. 08-2096**
	)	**Issued: June 18, 2009**
U.S. POSTAL SERVICE, POST OFFICE, Washington, DC, Employer	)	

Appearances:
Appellant, pro se,
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
DAVID S. GERSON, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 23, 2008 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decision dated July 3, 2008, which denied modification of a January 11, 2008 decision denying her claim for an emotional condition. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether appellant met her burden of proof in establishing that she developed an emotional condition in the performance of duty.

FACTUAL HISTORY

On October 26, 2007 appellant, then a 29-year-old city letter carrier, filed a traumatic injury claim alleging that on October 3, 2007 she had a panic attack and experienced insomnia and depression as a result of stress at work. She stopped work on October 3, 2007.

In an October 15, 2007 statement, appellant alleged that she was harassed and subject to reprisals and retaliation from management for filing an Equal Employment Opportunity (EEO)

complaint. She noted that she was improperly disciplined on several occasions from November 23, 2004 to September 25, 2007. Appellant alleged that on August 24, 2006 her request to review her personnel file was denied by Marcia McKeithan, her manager, but that on July 12, 2007 her supervisor, Deenvaughn Rowe, allowed her to do so. She asserted that she was improperly denied sick leave on July 27 and September 19, 2007. Appellant alleged that her local union was not diligent in representing her. She stated that on October 1, 2007 Mr. Rowe improperly inspected her mail route. Appellant also alleged that, on August 15, 2007, Ms. McKeithan did not honor her light-duty restrictions and that, on August 23 and September 21, 2007, Mr. Rowe assigned her duties beyond her work restrictions.

Appellant submitted emergency room discharge instructions from Doctors Community Hospital dated October 3, 2007 for anxiety, a panic attack and insomnia.

By letter dated December 10, 2007, the Office asked appellant to submit additional evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. In a letter of the same date, it requested the employing establishment address appellant's allegations of stress in the workplace.

Appellant submitted January 4, 2008 records from Dr. Joel S. Ganz, a Board-certified psychiatrist, who treated her for job-related anxiety, insomnia and depression.

In a January 11, 2008 decision, the Office denied appellant's claim finding that the evidence was not sufficient to establish that the events occurred as alleged. It further noted that there was no medical evidence which provided a diagnosis which could be connected to the claimed events.

In letters dated April 2 and May 8, 2008, appellant requested reconsideration. She submitted letters of warning dated November 24, 2004 and March 23, 2006, for irregular attendance and unauthorized penalty overtime. Appellant submitted several letters of suspension dated February 10[1] and 17,[2] April 4[3] and September 22, 2007.[4] In letters dated February 13 and 20, 2007, she filed grievances relating to the February 10 and 17, 2007 suspensions noting that she was never informed that she had to be back at the station after her route by 5:00 p.m. Appellant also submitted two grievance resolution forms dated June 26 and July 5, 2007, which noted that she would be paid annual leave from February 8 to 10, 2005 and also receive $300.00. She submitted an August 22, 2007 light-duty job offer, effective August 23, 2007 to February 23, 2008, in which she was limited to casing and carrying one route, processing forward mail and

[1] In a seven-day suspension dated February 10, 2007, the employer noted that appellant was instructed to report to the station by 5:00 p.m. but reported late on February 6, 7 and 8, 2007.

[2] In a 14-day suspension dated February 17, 2007, the employer noted that appellant was instructed to report to the station by 5:00 p.m. but reported late on February 13, 15 and 16, 2007.

[3] In a 14-day suspension dated April 4, 2007, the employer noted that appellant used annual leave instead of sick leave from February 3 to 5, 2007, she was late to work on February 14, 15, 26 and 27 and March 10, 12 and 17, 2007, she used unscheduled leave on March 14, 2007 and was absent without leave on March 23 and 24, 2007.

[4] In a seven-day suspension dated September 22, 2007, the employer noted that appellant failed to properly scan a barcode on a delivery confirmation package.

editing books and returns for eight hours daily pursuant to restrictions set forth by her treating physician. Appellant submitted a settlement agreement for the September 21, 2007 EEO complaint, which noted that Ms. McKeithan would not discuss appellant's personal business on the workroom floor and that appellant would receive a copy of the seven-day suspension. She also submitted an October 1, 2007 letter she sent to her union regarding the union's failure to provide documentation, resolutions and assistance in filing her grievances.

In an October 15, 2007 statement, appellant reiterated allegations that she was harassed and retaliated against by management and improperly disciplined. She submitted a memorandum from Mr. Rowe dated October 23, 2007, which advised that she had not been to work since October 2, 2007 and failed to submit acceptable documentation to substantiate her absence. Mr. Rowe requested that appellant submit documentation supporting her absence immediately and every 14 days thereafter until she returned to duty. He further advised appellant to attend a predisciplinary interview on October 29, 2007. Appellant submitted a settlement agreement dated November 14, 2007 in which the suspension issued on December 11, 2006 was removed from her file. In a declaration dated November 28, 2007, she alleged that she was sexually harassed by Mr. Rowe on October 1, 2007 and noted that he made remarks with a sexual connotation. On January 10, 2008 appellant asserted that Mr. Rowe insisted that she work overtime in violation of her restrictions.

Appellant submitted a May 10, 2005 return to work certificate from Dr. Ophnell Cumberbatch, a Board-certified internist, indicating that she could return to work on May 11, 2005. She submitted treatment notes from a Cignet Health Center dated July 3 to October 2, 2007, which noted appellant's treatment for recurrent back pain, stress and a panic attack. Appellant submitted notes from Dr. Memunatu Bangura, a Board-certified family practitioner, dated October 8 and 15, 2007, noting that she could return to work on October 29, 2007. Reports from Dr. Ganz, dated January 25 to May 12, 2008, diagnosed panic disorder, depression and sexual abuse.

By decision dated July 3, 2008, the Office denied modification of the prior decision on the grounds that the claimed emotional condition did not occur in the performance of duty.

LEGAL PRECEDENT

To establish her claim that appellant sustained an emotional condition in the performance of duty, she must submit the following: (1) medical evidence establishing that she has an emotional or psychiatric disorder; (2) factual evidence identifying employment factors or incidents alleged to have caused or contributed to her condition; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to her emotional condition.[5]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,[6] the Board

[5] *Donna Faye Cardwell*, 41 ECAB 730 (1990).

[6] 28 ECAB 125 (1976).

explained that there are distinctions to the type of employment situations giving rise to a compensable emotional condition arising under the Federal Employees' Compensation Act.[7] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act.[8] When an employee experiences emotional stress in carrying out her employment duties and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of her work.[9] There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage under the Act. Where the disability results from an employee's emotional reaction to her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position.[10]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, the Office, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[11] If a claimant does implicate a factor of employment, the Office should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, the Office must base its decision on an analysis of the medical evidence.[12]

ANALYSIS

Appellant alleged that she was harassed and subjected to reprisals and retaliation by management for filing an EEO complaint and sexually harassed by Mr. Rowe. She noted several incidents, specifically indicating that she was improperly disciplined on several occasions, her request to review her personnel file was denied by Ms. McKeithan, she was improperly denied sick leave on July 27 and September 19, 2007, Mr. Rowe improperly inspected her mail route on October 1, 2007 and Mr. Rowe and Ms. McKeithan did not honor her light-duty restrictions.

[7] 5 U.S.C. §§ 8101-8193.

[8] *See Anthony A. Zarcone*, 44 ECAB 751, 754-55 (1993).

[9] *Lillian Cutler, supra* note 6.

[10] *See Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991); *Lillian Cutler, supra* note 6.

[11] *See Norma L. Blank*, 43 ECAB 384, 389-90 (1992).

[12] *Id.*

To the extent that incidents alleged as constituting harassment by a supervisor are established as occurring and arising from appellant's performance of her regular duties, these could constitute employment factors.[13] However, for harassment to give rise to a compensable disability under the Act, there must be evidence that harassment did in fact occur. Mere perceptions of harassment are not compensable under the Act.[14]

The factual evidence fails to support appellant's claim for harassment or retaliation. The record reveals through disciplinary notices that on November 23, 2004 appellant was late in her deliveries, on March 23, 2006 she was issued a letter of warning for irregular attendance, on February 10 and 17 and April 4, 2007, she was suspended for unsatisfactory work performance as she was instructed to report to the station by 5:00 p.m. but arrived late and, on September 25, 2007, she was suspended for unsatisfactory work performance for failure to scan a barcode on a delivery confirmation package. There is no evidence showing that the employing establishment acted improperly in these matters. Regarding appellant's allegation that she was not permitted to review her file on August 24, 2006, she provided no evidence to support her contention and subsequently noted that, on July 12, 2007, Mr. Rowe permitted her to review the file. With regard to her allegation that she was sexually harassed by Mr. Rowe, she failed to provide any corroborating statements or other evidence supporting any specific incidents. The factual evidence fails to support appellant's claim that she was harassed or treated disparately by her supervisor. Rather, the evidence supports that on several occasions appellant was irregular in attendance, arrived at the station past her deadline and regularly used unscheduled leave.[15] Although appellant alleged that her supervisors engaged in actions which she believed constituted harassment, she provided no corroborating evidence or witness statements to establish her allegations.[16] The Board notes that general allegations of harassment are not compensable.[17]

Appellant also indicated that she filed an EEO claim for harassment and several grievances; however, the Board further notes that grievances and EEO complaints, by themselves, do not establish workplace harassment or unfair treatment occurred.[18] She submitted a settlement agreement of the EEO complaint dated September 21, 2007, which noted that Ms. McKeithan would not discuss appellant's personal business on the workroom floor and that she would receive a copy of the seven-day suspension. However, none of the information submitted regarding EEO or grievance matters establishes improper action by the employing establishment with regard to appellant. Thus, the evidence regarding these matters does not

[13] *David W. Shirey*, 42 ECAB 783, 795-96 (1991); *Kathleen D. Walker*, 42 ECAB 603, 608 (1991).

[14] *Jack Hopkins, Jr.*, 42 ECAB 818, 827 (1991). *See Joel Parker, Sr.*, 43 ECAB 220, 225 (1991) (finding that a claimant must substantiate allegations of harassment or discrimination with probative and reliable evidence).

[15] *Supra* note 1 to 4.

[16] *See William P. George*, 43 ECAB 1159, 1167 (1992) (claimed employment incidents not established where appellant did not submit evidence substantiating that such incidents actually occurred).

[17] *See Paul Trotman-Hall*, 45 ECAB 229 (1993).

[18] *James E. Norris*, 52 ECAB 93 (2000).

establish a compensable employment factor. Appellant has not established a compensable employment factor under the Act with respect to the claimed harassment.

Appellant also alleged that the local union was not diligently representing her in her claim and failed to provide documentation, resolutions and assistance in filing her grievances against the employing establishment. However, the Board has generally held that matters pertaining to union activities are not deemed to be employment factors[19] and that union activities are generally personal in nature and not considered to be in the course of employment.[20] Appellant's allegations regarding the union decisions to represent her relate to internal union affairs and are not within the course of employment.[21]

Other allegations by appellant regarding her work assignments relate to administrative or personnel actions. In *Thomas D. McEuen*,[22] the Board held that an employee's emotional reaction to administrative actions or personnel matters taken by the employing establishment is not covered under the Act as such matters pertain to procedures and requirements of the employer and do not bear a direct relation to the work required of the employee. The Board noted, however, that coverage under the Act would attach if the factual circumstances surrounding the administrative or personnel action established error or abuse by the employing establishment superiors in dealing with the claimant. Absent evidence of such error or abuse, the resulting emotional condition must be considered self-generated and not employment generated. In determining whether the employing establishment erred or acted abusively, the Board has examined whether the employing establishment acted reasonably.[23]

Appellant's allegations that the employing establishment improperly disciplined her relate to administrative or personnel matters unrelated to her regular or specially assigned work duties. The Board finds that the employing establishment did not act unreasonably in this administrative matter.[24] Although the handling of disciplinary actions and evaluations are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[25] Appellant alleged that she was improperly disciplined from November 24, 2004 to September 22, 2007 for insubordination, irregular attendance and unsatisfactory work performance. The record does not establish that the employing establishment acted unreasonably in these matters. Although the seven-day suspension issued on

[19] *See George A. Ross*, 43 ECAB 346 (1991).

[20] *Marie Boylan*, 45 ECAB 338 (1994).

[21] *See id.*

[22] *See Thomas D. McEuen, supra* note 10.

[23] *See Richard J. Dube*, 42 ECAB 916, 920 (1991).

[24] *See Janet I. Jones*, 47 ECAB 345, 347 (1996), *Jimmy Gilbreath*, 44 ECAB 555, 558 (1993); *Apple Gate*, 41 ECAB 581, 588 (1990); *Joseph C. DeDonato*, 39 ECAB 1260, 1266-67 (1988).

[25] *Id.*

December 11, 2006 was removed from her file this does not establish error or abuse.[26] Appellant presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Thus, appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that on August 24, 2006 her request to review her personnel file was denied by Ms. McKeithan. The Board has found that an employee's complaints concerning the manner in which a supervisor performs her duties as a supervisor or the manner in which a supervisor exercises her supervisory discretion fall, as a rule, is outside the scope of coverage provided by the Act. This principle recognizes that a supervisor or manager in general must be allowed to perform her duties, that employees will at times dislike the actions taken, but that mere disagreement or dislike of a supervisory or management action will not be actionable, absent evidence of error or abuse.[27] Appellant presented no corroborating evidence or witness statements to support that the employing establishment erred or acted abusively with regard to these allegations. The evidence does not indicate that the employing establishment acted unreasonably. Appellant has not established administrative error or abuse in the performance of these actions and therefore they are not compensable under the Act.

Appellant alleged that she was denied sick leave on July 27 and September 19, 2007. The Board notes that the handling of leave requests and attendance matters are generally related to the employment, they are administrative functions of the employer and not duties of the employee.[28] The Board finds that the employing establishment acted reasonably in this administrative matter. The record reveals that appellant was disciplined on several occasions for unscheduled leave and was informed that her job was in jeopardy due to her irregular attendance. Appellant has not shown that the employing establishment erred or acted abusively in this matter.

Appellant alleged that on October 1, 2007 her supervisor Mr. Rowe improperly inspected her mail route. Although the monitoring of activities at work is generally related to the employment, it is an administrative function of the employer, and not a duty of the employee.[29] Appellant has presented no corroborating evidence to support that the employing establishment erred or acted abusively with regard to these allegations. Appellant was informed by management that all routes had to be inspected on a yearly basis and October 1, 2007 was the beginning of the fiscal year, therefore the inspection was not unusual. The Board finds that the evidence does not show that the employing establishment acted unreasonably in its effort to monitor appellant's work as a way of improving her job performance.

[26] *See Linda K. Mitchell*, 54 ECAB 748 (2003) (the mere fact that the employing establishment lessened a disciplinary action did not establish that the employing establishment erred or acted in an abusive manner).

[27] *See Marguerite J. Toland*, 52 ECAB 294 (2001).

[28] *See Judy Kahn*, 53 ECAB 321 (2002).

[29] *See Dennis J. Balogh*, 52 ECAB 232 (2001); *see also John Polito*, 50 ECAB 347 (1999).

Appellant also generally alleged that she was forced to work beyond her tolerance. She noted that, on August 15, 2007, Ms. McKeithan would not honor her light-duty restrictions and that, on August 23 and September 21, 2007, Mr. Rowe assigned her duties in violation of her work restrictions. The Board notes that assignment of duties beyond an employee's work tolerance limitations can be a compensable factor of employment.[30] However, appellant has not provided any specific evidence establishing that the employing establishment assigned her duties beyond her limitations. On December 10, 2007 the Office requested appellant submit factual evidence, including a detailed description of the employment factors or incidents that she believed contributed to her claimed illness. Appellant did not provide any additional factual information on this aspect of her claim. The record contains no probative evidence supporting appellant's assertions that the employing establishment erred in providing a job within her restrictions. Instead, the evidence indicates that the employing establishment sought to accommodate appellant's restrictions. The record establishes that the employer provided appellant with light duty as noted in job offer dated August 22, 2007. Therefore, the Board finds that there is insufficient evidence to establish that appellant worked beyond her restrictions.

Consequently, appellant has not established her claim for an emotional condition as she has not attributed her claimed condition to any compensable employment factors.[31]

CONCLUSION

The Board finds that the evidence fails to establish that appellant sustained an emotional condition in the performance of duty.

[30] *See Kim Nguyen*, 53 ECAB 127 (2001).

[31] As appellant has failed to establish a compensable employment factor, the Board need not address the medical evidence of record; *see Margaret S. Krzycki*, 43 ECAB 496 (1992).

ORDER

IT IS HEREBY ORDERED THAT the July 3 and January 11, 2008 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: June 18, 2009
Washington, DC

David S. Gerson, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board